



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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SEP 26 2016

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Nicole Rowan, Program Manager  
Clean Water Program  
Colorado Department of Public Health and Environment  
4300 Cherry Creek Drive South  
Denver, Colorado 80246-1530

Dear Ms. Rowan:

This letter concerns the draft Clean Water Program Facility Inspection Plan ("the Plan") for federal fiscal year (FY) 2017 that the Clean Water Program (CWP) submitted to the U.S. Environmental Protection Agency for review in August 2016. The Plan proposes inspection commitments for the various National Pollutant Discharge Elimination System (NPDES) program areas under control of the CWP in Colorado. The EPA has reviewed the Plan and offered verbal comments to CWP points of contact. With this letter, we are articulating in writing the EPA's concerns with several aspects of the Plan.

The EPA reviewed the Plan, as with inspection plans submitted by all states nationwide, according to the expectations set forth in the "Clean Water Act National Pollutant Discharge Elimination Compliance Monitoring Strategy" issued in 2014 ("the CMS"). The CMS provides a framework for the EPA to evaluate state inspection plans that do not align with the national goals and flexibilities of the CMS. The Plan submitted by the CWP would constitute such an alternative CMS plan; however, several conditions must be met in order for the Plan to qualify as an alternative CMS plan. Page 3 of the CMS describes those conditions. The following paragraphs discuss conditions that the Plan does not currently meet with respect to specific NPDES programmatic inspection commitments in the Plan.

The first programmatic area of concern is municipal separate storm sewer systems (MS4s). The Plan would constitute an alternative CMS plan, because the CWP commits to doing off-site desk audits in the form of annual report review without having first conducted an on-site compliance evaluation during a previous year at many, if not most, of the MS4s in Colorado's universe. The CWP has conducted on-site inspections at only five of the state's 116 MS4s in the last five years, and all five of those inspections were conducted as joint inspections with the EPA with the EPA serving as the inspection lead. The scope of the EPA's evaluation of an alternative CMS plan is to evaluate the appropriateness and ensure program integrity. Although a stated purpose of the CMS is to better focus inspection resources, the lack of inspection resources focused by the CWP on MS4 inspections over time is a concern especially given that a strong MS4 program can have significant water quality impacts partially due to, among other factors, increased compliance of construction and industrial stormwater sites within an MS4's jurisdiction. The CMS states that the flexibilities for meeting the goals should include an explanation

that includes implications on CMS planning in future years. The Plan should address this resource concern and discuss how the CWP will ensure adequate inspection resources will be focused on MS4s both in FY 2017 and in future years. In addition, the following conditions for MS4s need be addressed in the Plan in order to be approved as part of an alternative CMS plan:

- Off-site desk audits must be appropriately recorded as a compliance monitoring activity in the Integrated Compliance Information System;
- Off-site desk audits must lead to a compliance determination;
- Off-site desk audits must be conducted by appropriate personnel; and
- The CWP must document its evaluation of a list of five facility-specific questions on page 3 of the CMS to demonstrate that off-site desk audits are appropriate compliance monitoring activities for the MS4s.

The second programmatic area of concern is industrial stormwater. The Plan commits the CWP to on-site compliance evaluations at 2% of permitted facilities, along with reconnaissance inspections at an additional 0.5% of facilities, for a total coverage of 2.5% in FY 2017. This coverage deviates from the CMS goal of 10% coverage annually. Although the Plan describes how the CWP would prioritize its selection of industrial stormwater permittees for inspection, it lacks other information to qualify as an alternative CMS plan. The Plan should describe the rationale for this deviation from the national goal, justifying why resource trade-offs were made with other program areas and why other areas would receive more attention at the expense of industrial stormwater. Furthermore, the Plan needs to explain how the CWP has determined that the low attention on industrial stormwater will not have negative public health or environmental impacts in Colorado. This last question is especially important given the CWP's low level of oversight of MS4s, which have their own systems of assuring compliance at stormwater sites within their jurisdiction when they are properly implemented. The EPA and CWP have discussed the EPA conducting inspections and, as necessary, following up with enforcement for industrial stormwater facilities in FY 2017. However, the CWP should not continue to rely on the EPA's inspection resources to provide this type of coverage.

The third programmatic area of concern is minor process water facilities (i.e. traditional non-majors). The Plan commitment is 98 compliance evaluation inspections in FY 2017 representing less than 7% coverage across this universe. The CMS goal is to inspect every traditional non-major at least once every five years including assuring that facilities discharging pollutants contributing to surface water impairments receive a comprehensive inspection. Because the proposed rate of coverage is less than what would be required over a sustained five-year period (i.e. 20%) in order to meet the inspection goal, the Plan should articulate how the CWP will ensure that the five-year rolling goal is achieved despite the resource constraints described in the Plan for FY 2017. If that goal is not expected to be achieved, the Plan should describe the rationale for this deviation in the same way that it should be described for industrial stormwater in order to qualify as an alternative CMS plan.

Please incorporate the above information into the Plan. We look forward to discussing and/or reviewing modifications to the Plan with you and/or your staff. If you have any questions regarding this matter, please contact Michael Boeglin on my staff at 303-312-6250.

Sincerely,



Stephanie DeJong, Acting Unit Chief  
NPDES Enforcement Program  
Office of Enforcement, Compliance  
And Environmental Justice

cc: Nathan Moore, Colorado Department of Public Health and Environment  
Greg Naugle, Colorado Department of Public Health and Environment